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Bacon and Christopher L. Bacon

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 AMCO INSURANCE COMPANY, an Iowa
16 Corporation,

17 Plaintiff,

18 vs.

19 THOMAS BACON, an individual, MICHELE
20 PAUNESSA-BACON, an individual,

21 Defendants,

22 THOMAS BACON, an individual,

23 Counter-Claimant,

24 vs.
25

26 AMCO INSURANCE COMPANY, an Iowa
Corporation,

27 Counter-Defendant,
28

CASE NO.: 2:16-cv-00543-JAD-PAL

**JOINT MOTION FOR AN ORDER
SUBSTITUTING CHRISTOPHER L.
BACON INTO THIS ACTION AS A
DEFENDANT AND COUNTER-
CLAIMANT IN PLACE OF THOMAS
BACON**

[Rule 25(a)(1)]

1 Plaintiff/Counter-Defendant AMCO Insurance Company (“AMCO”), Defendant Michele
2 Paunessa-Bacon, and non-party Christopher L. Bacon hereby submit the following Joint Motion
3 pursuant to Rule 25 for an Order substituting Christopher L. Bacon into this action as a defendant
4 and counter-claimant in his capacity as the Special Administrator for the Estate of Thomas Bacon.

5 **I. SUMMARY OF THE FACTS.**

6 1. Thomas Bacon, one of the Defendants and the sole Counterclaimant in this action,
7 died on November 5, 2016.

8 2. On March 7, 2017, Christopher L. Bacon filed a petition in the District Court for
9 Clark County, Nevada to be appointed as the Special Administrator of Thomas Bacon’s estate.

10 3. On April 5, 2017, the District Court issued an Order granting letters of special
11 administration for the Estate of Thomas Lee Bacon to Christopher L. Bacon. According to that
12 Order, the District Court granted Christopher Bacon the powers enumerated in N.R.S. 140.040. A
13 true and correct copy of the forgoing Order is attached hereto as **Exhibit A**.

14 **II. CHRISTOPHER BACON SHOULD BE SUBSTITUTED IN TO THIS ACTION.**

15 **A. The Standard for Substitution.**

16 4. “If a party dies and the claim is not extinguished, the court may order substitution
17 of the proper party.” Fed. R. Civ. P. 25(a)(1). “A motion for substitution may be made by any
18 party or by the decedent’s successor or representative.” *Id.* “[A] timely motion brought by the
19 Administratrix of a deceased party is within the terms of the Rule’s operation.” *Boggs v. Dravo*
20 *Corp.*, 532 F.2d 897, 900 (3d Cir. 1976). *See also F.T.C. v. AMG Services, Inc.*, 2014 WL
21 2742872 at *2 (D. Nev., June 17, 2014) (holding that the executor of a deceased party’s estate is a
22 “proper party” under Rule 25).

23 5. “The estate of a deceased party is not a proper party under Rule 25. . . . A proper
24 party under Rule 25 must be a legal representative of the deceased.” *Natale v. Country Ford Ltd.*,
25 287 F.R.D. 135, 137 (E.D.N.Y. 2012).

26 6. Upon a substitution made under Rule 25, “[t]he substituted party steps into the
27 same position as original party.” *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996).

B. Christopher L. Bacon is a “Proper Party” to be Substituted into this Action in Place of Thomas Bacon.

7. Under Nevada law, there are several circumstances under which a court must appoint a special administrator to collect and take charge of a decedent’s estate. See N.R.S. 140.010.

8. Under N.R.S. 140.040(2)(a), the special administrator of an estate may “maintain or defend actions and other legal proceedings as a personal representative.”

9. In this case, the District Court of Nevada appointed Christopher L. Bacon to be the Special Administrator for the Estate of Thomas Lee Bacon, with “the powers enumerated in N.R.S. 140.040.”

10. As a result, Christopher L. Bacon has the power to “maintain or defend” this action as a “personal representative” of the Estate of Thomas Bacon. See Trustees of Bricklayers & Allied Craftworkers Local 13 Defined . . . v. Jim Bird Title & Marble, et al., 2012 WL 760732 at *1 (D. Nev., March 8, 2012) (ordering that the deceased defendant’s wife be substituted in as defendant to the action, but only in her capacity as the Special Administrator for his estate and not in her individual capacity).

III. CONCLUSION.

11. The parties to this stipulation request that Christopher L. Bacon be substituted in as a party to this action as a Defendant and as the sole Counter-claimant in place of Thomas Bacon, but only in his capacity as the Special Administrator for the Estate of Thomas Bacon.

12. The parties acknowledge that as a result of the requested substitution, Christopher L. Bacon shall “step[] into the same position as [Thomas Bacon]” stood in this action prior to his death. Hilao, 103 F.3d at 766.

13. To accommodate Christopher L. Bacon’s substitution into this action, the parties further request that the Court amend the existing case schedule as follows:

Discovery Cut-Off	From June 30, 2017 to August 31, 2017
Dispositive Motion Filing Date	From July 28, 2017 to September 28, 2017
Pretrial Order	From August 29, 2017 to October 27, 2017

1 Dated: May 26, 2017

HINES HAMPTON LLP

2
3 /s/ Brian Pelanda

Christine M. Emanuelson

Brian Pelanda

Attorneys for Plaintiff/Counter-defendant

AMCO INSURANCE COMPANY

7 Dated: May 26, 2017

VANNAH & VANNAH /
THE POWELL LAW FIRM

10 /s/ Robert D. Vannah

Robert D. Vannah

Paul D. Powell

Attorneys for Michele Paunessa-Bacon and

Christopher L. Bacon

15 IT IS SO ORDERED:

16 
17 UNITED STATES MAGISTRATE JUDGE

18
19 DATED: June 2, 2017

20
21 ATTESTATION OF CONCURRENCE IN FILING

22 I hereby attest and certify that on May 23, 2017, I received concurrence from counsel for
23 Michele Paunessa-Bacon and Christopher L. Bacon, Robert Vannah, to file this document with his
24 electronic signature attached.

25 I certify under penalty of perjury under the laws of the United States of America that the
26 foregoing is true and correct. Executed on May 23, 2017.

27 /s/ Brian Pelanda

Brian Pelanda

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2017, I electronically filed the foregoing document or paper with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 26, 2017.

A handwritten signature in black ink, appearing to read 'Ayvette Hernandez', is written over a horizontal line.

Ayvette Hernandez

Electronic Mail Notice List

Mark L. Jackson- mjackson@vannahlaw.com
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Robert D. Vannah – rvannah@vannahlaw.com